To Be Published:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GERALD D. BUSHMAN, Plaintiff, vs. ELECTROLUX HOME PRODUCTS, ELECTROLUX-AB, FRIGIDAIRE COMPANY LAUNDRY PRODUCTS, Defendant.	No. C02-3017-MWB **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

A. Procedural Background

On January 31, 2002, plaintiff Gerald D. Bushman filed a petition in Iowa District Court for Hamilton County against his former employer, defendant Electrolux Home Products, Electrolux-AB, Frigidaire Company Laundry Products ("Electrolux"), seeking damages resulting from his termination on December 11, 2000. Defendant Electrolux removed this case to this court on February 27, 2002. In his petition, Bushman alleges four causes of action: a claim of disability discrimination pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, a similar claim under Iowa Code Chapter 216 *et seq*. ("ICRA"), a claim for violation of the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 *et seq.*, and a similar pendant state law claim for violation of the ICRA. Defendant Electrolux answered Bushman's petition on March 4, 2002, denying Bushman's claims and asserting various defenses.

On January 3, 2003, defendant Electrolux filed a Motion for Summary Judgment on all of Bushman's claims. First, in its motion, defendant Electrolux claims that Bushman is not "disabled" within the meaning of either the ADA, or Chapter 216 of the Iowa Code. Specifically, defendant Electrolux asserts that Bushman does not have a physical impairment that substantially limits one or more of his major life activities. Second, Electrolux claims that Bushman cannot establish that Electrolux perceived Bushman as having a physical impairment that substantially limited one or more of his major life activities. Electrolux also asserts that Bushman cannot demonstrate that its stated reason for terminating Bushman's employment was pretextual. On February 18, 2003, Bushman resisted Electrolux's Motion for Summary Judgment, arguing that there are genuine issues of material facts in dispute regarding all of his claims.

On March 14, 2003, the court heard telephonic oral arguments on Electrolux's Motion

for Summary Judgment. Plaintiff Bushman was represented by Blake Parker of Blake Parker Law Office, Fort Dodge Iowa. Defendant Electrolux was represented by Keith L. Pryatel of Kastner, Westman & Wilkins, L.L.C., Akron, Ohio. Before discussing the standards for Electrolux's Motion for Summary Judgment, however, the court will first examine the factual background of this case.

B. Factual Background

The summary judgment record reveals that the following facts are undisputed. Electrolux's Webster City, Iowa production plant manufactures household washers and dryers. The plant employs a logistics system composed of "milk runs" to ensure that manufacturing components, such as plastic, steel, and wiring harnesses, are trucked from suppliers "just in time" to ensure that production is continuous. Trucking companies hired by Electrolux to make the "milk runs" begin their delivery routes at a predetermined supplier location, and may make three or four separate supplier stops while on their way to Webster City. Bushman was in charge of and managed inbound freight for Electrolux's Webster City plant.

Throughout 1999, Bushman used Decker Lines, Inc. as his predominant inbound freight carrier of choice. The Webster City plant spent $11,748,272 for inbound freight in the production of 2,110,349 appliances. On February 1, 2000, Decker Trucking apprised Bushman that it was going to significantly raise its per mile freight rates for virtually all of the "milk runs," purportedly because of escalating medical, insurance, and fuel costs. On April 14, 2000, Bushman signed a carrier contract with Decker Trucking which incorporated these increased rates. At the time that Bushman signed the new carrier contract with Decker Trucking, Bushman knew that Decker Trucking's rates were uncompetitive.

Bushman did not tell any of his supervisors of the new contract with Decker Trucking and the increased rates which were being charged by Decker Trucking. On June 7, 2000,

Bushman was first diagnosed as a diabetic. He took a medical leave of absence from Electrolux beginning on June 7, 2000. Bushman subsequently had two toes amputated. At the time Bushman took his medical leave of absence, Decker Trucking was hauling 70% of Electrolux's inbound freight for its Webster City plant.

During Bushman's medical leave of absence, his inbound freight management duties were filled by Tony Bonjour, the plant's Deliver-On-Time Coordinator, who was at the time working with outbound freight. Bonjour located the April contract with Decker that Bushman had signed and called it to the attention of Plant Manager Doug Mechaelsen. Mechaelson and Bonjour sent a letter dated June 20, 2000, to Decker Trucking demanding a rebate for what they viewed were overcharges under the April contract and an immediate reduction of the inbound freight rates that Bushman had agreed to in the April contract. Decker Trucking responded by an across-the-board freight rate reduction for virtually all their inbound routes. Even though Decker Trucker agreed to roll backs in its freight rate, Electrolux shifted much of its inbound freight business to alternative carriers.

In September 2000, Bushman arrived at the Webster City plant to resume work. He was wearing an open-toed shoe that left his toes exposed. In order to reach his office, Bushman had to walk across Electrolux's production floor, where there was heavy tow motor traffic. Electrolux, in compliance with an OSHA requirement, had a work rule which prohibited open-toed footwear. A plastic cap was located by Human Resources personnel and affixed over Bushman's open toes. This shield, however, caused Bushman's toes to start to bleed and Bushman was sent home that morning and told not to return until he was able to wear the requisite footwear.

On November 20, 2000, Bushman returned from his medical leave. Bushman was not permitted to return to his former position as manager of inbound freight. Electrolux asserted that this was due to the Decker Trucking freight contract Bushman had signed. Instead, Bushman was assigned a position assisting in the calibration of quality control

instruments. Later, in December 2000, a corporate ordered five percent reduction in payroll was scheduled for the Webster City plant. Bushman was among those employees laid off during that cost reduction.

Bushman has a mild form of diabetes, which does not require either the injection of insulin or a regiment of exercise. Bushman concedes that timely administered diabetic medication leaves him no different than any other ostensibly non-disabled individual. Bushman has never been hospitalized because of diabetes, nor has he experienced bouts of hypoglycemia or hyperglycemia. Bushman does not see an endocrinologist to treat his diabetes.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

This court has considered in some detail the standards applicable to motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in a number of prior decisions. *See, e.g.*, *Swanson v. Van Otterloo,* 993 F. Supp. 1224, 1230-31 (N.D. Iowa 1998); *Dirks v. J.C. Robinson Seed Co.*, 980 F. Supp. 1303, 1305-07 (N.D. Iowa 1997); *Laird v. Stilwill*, 969 F. Supp. 1167, 1172-74 (N.D. Iowa 1997); *Rural Water Sys. #1 v. City of Sioux Ctr.*, 967 F. Supp. 1483, 1499-1501 (N.D. Iowa 1997), *aff'd in pertinent part*, 202 F.3d 1035 (8th Cir.), *cert. denied,* 531 U.S. 820 (2000); *Tralon Corp. v. CedarAPGds, Inc.*, 966 F. Supp. 812, 817-18 (N.D. Iowa 1997), *aff'd*, 205 F.3d 1347 (8th Cir. 2000) (Table op.); *Security State Bank v. Firstar Bank Milwaukee, N.A.*, 965 F. Supp. 1237, 1239-40 (N.D. Iowa 1997); *Lockhart v. Cedar RAPGds Community Sch. Dist.*, 963 F. Supp. 805 (N.D. Iowa 1997). The essentials of these standards for present purposes are as follows.

1. Requirements of Rule 56

Rule 56 itself provides, in pertinent part, as follows:

> Rule 56. Summary Judgment
>
> (b) For Defending Party. A party against whom a claim . . . is asserted . . . may, at any time, move for summary judgment in the party's favor as to all or any part thereof.
>
> (c) Motions and Proceedings Thereon. . . . *The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.*

FED. R. CIV. P. 56(a)-(c) (emphasis added). Applying these standards, the trial judge's function at the summary judgment stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). As to whether a factual dispute is "material," the Supreme Court has explained, "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Rouse v. Benson*, 193 F.3d 936, 939 (8th Cir. 1999); *Beyerbach v. Sears*, 49 F.3d 1324, 1326 (8th Cir. 1995); *Hartnagel*, 953 F.2d at 394.

2. The parties' burdens

Procedurally, the moving party bears "the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel*, 953 F.2d at 395 (citing *Celotex Corp. v. Catrett*,

477 U.S. 317, 323 (1986)); *see also Rose-Maston*, 133 F.3d at 1107; *Reed v. Woodruff County, Ark.*, 7 F.3d 808, 810 (8th Cir. 1993). "When a moving party has carried its burden under *Rule* 56(c), its opponent must do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. Rather, the party opposing summary judgment is required under Rule 56(e) to go beyond the pleadings, and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Celotex*, 477 U.S. at 324; *Rabushka ex. rel. United States v. Crane Co.*, 122 F.3d 559, 562 (8th Cir. 1997), *cert. denied*, 523 U.S. 1040 (1998); *McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 511 (8th Cir. 1995); *Beyerbach*, 49 F.3d at 1325. If a party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is "entitled to judgment as a matter of law." *Celotex Corp.*, 477 U.S. at 323; *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1492 (8th Cir. 1997). In reviewing the record, the court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. *See Matsushita Elec. Indus. Co.*, 475 U.S. at 587; *Quick*, 90 F.3d at 1377 (same).

3. Summary judgment in employment discrimination cases

Because this is an employment discrimination case, it is well to remember that the Eighth Circuit Court of Appeals has cautioned that "summary judgment should seldom be used in employment-discrimination cases." *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994) (citing *Johnson v. Minnesota Historical Soc'y*, 931 F.2d 1239, 1244 (8th Cir. 1991); *Hillebrand v. M-Tron Indus., Inc.*, 827 F.2d 363, 364 (8th Cir. 1987), *cert. denied*, 488 U.S. 1004 (1989)); *see also Snow v. Ridgeview Medical Ctr.*, 128 F.3d 1201, 1205 (8th Cir. 1997) (citing *Crawford*); *Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 615 (8th Cir. 1997) (quoting *Crawford*); *Chock v. Northwest Airlines, Inc.*, 113 F.3d 861, 862 (8th

Cir. 1997) ("We must also keep in mind, as our court has previously cautioned, that summary judgment should be used sparingly in employment discrimination cases," citing *Crawford*); *Smith v. St. Louis Univ.*, 109 F.3d 1261, 1264 (8th Cir. 1997) (quoting *Crawford*); *Hardin v. Hussmann Corp.*, 45 F.3d 262 (8th Cir. 1995) ("summary judgments should only be used sparingly in employment discrimination cases," citing *Haglof v. Northwest Rehabilitation, Inc.*, 910 F.2d 492, 495 (8th Cir. 1990); *Hillebrand*, 827 F.2d at 364). Summary judgment is appropriate in employment discrimination cases only in "those rare instances where there is no dispute of fact and where there exists only one conclusion." *Johnson*, 931 F.2d at 1244; *see also Webb v. St. Louis Post-Dispatch*, 51 F.3d 147, 148 (8th Cir. 1995) (quoting *Johnson*, 931 F.2d at 1244); *Crawford*, 37 F.3d at 1341 (quoting *Johnson*, 931 F.2d at 1244). To put it another way, "[b]ecause discrimination cases often depend on inferences rather than on direct evidence, summary judgment should not be granted unless the evidence could not support any reasonable inference for the nonmovant." *Crawford*, 37 F.3d at 1341 (holding that there was a genuine issue of material fact precluding summary judgment); *accord Snow*, 128 F.3d at 1205 ("Because discrimination cases often turn on inferences rather than on direct evidence, we are particularly deferential to the nonmovant," citing *Crawford*); *Webb v. Garelick Mfg. Co.*, 94 F.3d 484, 486 (8th Cir. 1996) (citing *Crawford*, 37 F.3d at 1341); *Wooten v. Farmland Foods*, 58 F.3d 382, 385 (8th Cir. 1995) (quoting *Crawford*, 37 F.3d at 1341); *Johnson*, 931 F.2d at 1244.

However, the Eighth Circuit Court of Appeals also observed that, "[a]lthough summary judgment should be used sparingly in the context of employment discrimination cases, *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994), the plaintiff's evidence must go beyond the establishment of a prima facie case to support a reasonable inference regarding the alleged illicit reason for the defendant's action." *Landon v. Northwest Airlines, Inc.*, 72 F.3d 620, 624 (8th Cir. 1995) (citing *Reich v. Hoy Shoe Co.*, 32 F.3d 361, 365 (8th Cir. 1994)); *accord Kiel v. Select Artificials, Inc.*, 169 F.3d 1131, 1134 (8th Cir.)

(observing that the burden-shifting framework of *McDonnell Douglas* must be used to determine whether summary judgment is appropriate), *cert. denied*, 528 U.S. 818 (1999). In *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), the Supreme Court reiterated that "'[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.'" *Reeves*, 530 U.S. at 142 (quoting *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981)).[1] Thus, what the plaintiff's evidence must show, to avoid summary judgment or judgment as a matter of law, is "'1, that the stated reasons were not the real reasons for [the plaintiff's] discharge; and 2, that age [or race, or sex, or other prohibited] discrimination was the real reason for [the plaintiff's] discharge." *Id.* at 153 (quoting the district court's jury instructions as properly stating the law). The Supreme Court clarified in *Reeves* that, to meet this burden, "a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, *may* permit the trier of fact to conclude that the employer unlawfully discriminated." *Id.* at 148 (emphasis added).

The court will apply these standards to defendant Electrolux's motion for summary judgment.

B. Elements of an ADA claim

This court has described the analytical framework for an ADA disability claim as follows:

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[1]In *Reeves*, the Supreme Court was considering a motion for judgment as a matter of law *after* a jury trial, but the Supreme Court also reiterated that "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same.'" *Reeves*, 530 U.S. at 150 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986)). Therefore, the standards articulated in *Reeves* are applicable to the present motion for summary judgment.

> To qualify for relief under the ADA, a plaintiff must establish the following: (1) that he or she is a disabled person within the meaning of the ADA; (2) that he or she is qualified[;] that is, with or without reasonable accommodation (which the plaintiff must describe), he or she is able to perform the essential functions of the job; *and* (3) that the employer terminated the plaintiff, or subjected the employee to an adverse decision, "because of" the plaintiff's disability.

Walsted v. Woodbury County, 113 F.3d 1318, 1326 (N.D. Iowa 2000) (emphasis added); *see Cravens v. Blue Cross & Blue Shield of Kansas City*, 214 F.3d 1011, 1016 (8th Cir. 2000).[2] "If a plaintiff in an ADA employment discrimination case can establish these three elements, then the burden shifts to the employer to proffer a legitimate, nondiscriminatory reason for the adverse employment action. *See McDonnell Douglas Corp. v. Green*, 411

[2]The court notes that in considering Bushman's disability discrimination claims it will not distinguish between his claims under the ADA and comparable disability discrimination claims under the IRCA. This is appropriate because the Iowa Supreme Court has recognized that federal precedent is applicable to discrimination claims under the ICRA. *See Fuller v. Iowa Dep't of Human Servs.*, 576 N.W.2d 324, 329 (Iowa 1998) (recognizing that Chapter 216's prohibition on disability discrimination is the state-law "counterpart" to the ADA, and that, "[i]n considering a disability discrimination claim brought under Iowa Code chapter 216, we look to the ADA and cases interpreting its language. We also consider the underlying federal regulations established by the Equal Employment Opportunity Commission (hereinafter 'EEOC'), the agency responsible for enforcing the ADA.") (internal citations omitted); *cf. Vivian v. Madison*, 601 N.W.2d 872, 873 (Iowa 1999) ("The ICRA was modeled after Title VII of the United States Civil Rights Act). Iowa courts, therefore, traditionally turn to federal law for guidance in evaluating the ICRA. *King v. Iowa Civil Rights Comm'n*, 334 N.W.2d 598, 601 (Iowa 1983). While federal law is not controlling and courts should not substitute the language of the federal statutes for the clear words of the ICRA, Iowa courts do look to the analytical framework utilized by the federal courts in assessing federal law. *Hulme v. Barrett*, 449 N.W.2d 629, 631 (Iowa 1989); *accord Board of Supervisors of Buchanan County v. Iowa Civil Rights Comm'n*, 584 N.W.2d 252, 256 (Iowa 1998) ("In deciding gender discrimination disputes, we adhere to the Title VII analytical framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04, 93 S.Ct. 1817, 1824-25, 36 L.Ed.2d 668, 677-79 (1973)).

U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); (other citations omitted). Once such a reason is proffered, the burden shifts back to the plaintiff to show that the employer's stated reason is pre-textual." *Walsted*, 113 F.3d at 1326-27.

Under the ADA, a "disabled person" either (1) has a "physical or mental impairment that substantially limits one or more of the [person's] major life activities[,]" (2) has "a record of such an impairment," or (3) is "regarded as having such an impairment." 42 U.S.C. § 12102(2)(A), (B), (C). An employer is prohibited from discriminating against a qualified employee solely on the basis of a disability. 42 U.S.C. § 12112(a). The ADA defines discrimination to include the failure to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability, unless the accommodation would impose an undue hardship. 42 U.S.C. § 12112(b)(5)(A).

C. Bushman's Claims Under the ADA

1. Bushman's actual disability claim

Defendant Electrolux initially asserts that Bushman cannot establish a *prima facie* case of disability discrimination because he cannot demonstrate that he is disabled. Thus, in considering whether Bushman can make out a *prima facie* case of discrimination under the ADA, the court must first determine whether Bushman is "disabled" as defined by the ADA; that is, whether he has a physical or mental impairment that substantially limits one or more of his major life activities. 42 U.S.C. § 12102(2)(A); *see Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 481 (1999) (requiring that a person be presently – not potentially or hypothetically – substantially limited in order to demonstrate a disability). "Merely having an impairment does not make one disabled for purposes of the ADA. Claimants also need to demonstrate that the impairment limits a major life activity." *Toyota Motor Mfg. Ky., Inc. v. Williams*, 534 U.S. 184, ___, 122 S. Ct. 681, 690 (2002).

Because the ADA does not define "major life activities," the Eighth Circuit has been

guided by the definition provided in 29 C.F.R. § 1630.2 of the EEOC regulations implementing Title I of the ADA. *See Aucutt*, 85 F.3d at 1319. As the court observed in *Aucutt*:

> As defined in 29 C.F.R. § 1630.2(I), the phrase "major life activities" means "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i).

*Aucut*t, 85 F.3d at 1319; *Webber v. Strippit, Inc.*, 186 F.3d 907, 910 (8th Cir. 1999). Under the EEOC's interpretations of the ADA,

> "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, reaching.

29 C.F.R. pt. 1630, App. § 1630.2(I) (citation omitted). The Eighth Circuit also has considered major life activities to include sitting, standing, lifting, and reaching. *See Fjellestad v. Pizza Hut of America, Inc.*, 188 F.3d 944, 946 (8th Cir. 1999).

The EEOC's Interpretive Guidance on Title I of the Americans With Disabilities Act, 29 C.F.R. pt. 1630, App. § 1630.2(j), provides:

> [A]n impairment is substantially limiting if it significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity as compared to the average person in the general population's ability to perform that same major life activity. Thus, for example, an individual who, because of an impairment, can only walk for very brief periods of time would be substantially limited in the major life activity of walking.

29 C.F.R. pt. 1630, app., 1630.2(j); *see Walsted*, 113 F. Supp. 2d at 1327-28.

In *Toyota Motor*, the United States Supreme Court addressed the question of "what

a plaintiff must demonstrate to establish a substantial limitation in the specific major life activity of performing manual tasks." *Toyota Motor*, 122 S. Ct. at 691. After analyzing the terms "substantial" and "major," the Court held "that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term." *Id.* Moreover, "[i]t is insufficient for individuals attempting to prove disability status under this test to merely submit evidence of a medical diagnosis of an impairment. Instead, the ADA requires those 'claiming the Act's protection . . . to prove a disability by offering evidence that the extent of the limitation [caused by their impairment] in terms of their own experience . . . is substantial.'" *Id.* at 691-92 (quoting *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 567 (1999)). This definition "makes clear that Congress intended the existence of a disability to be determined in such a case-by-case manner." Id. at 692. "An individualized assessment of the effect of an impairment is particularly necessary when the impairment is one whose symptoms vary widely from person to person." *Id.*

Using these standards, the court must determine whether Bushman has presented a genuine issue of material fact as to whether his diabetes substantially limits him in a major life activity. During discovery, Electrolux posed the following interrogatory to Bushman:

> Identify the "major life activities," to which Plaintiff alleges he was substantially limited, or perceived as being substantially limited, whether it be performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting or reaching.

Defendant's Int. No. 4. Bushman's answer to this interrogatory was: "None." Defendant's App. at 133. Similarly, Electrolux made several requests for admissions from Bushman related to whether he had a physical condition that substantially limited a major life activity. In each instance Bushman admitted that he did not have a physical impairment

or condition that limited one or more of his major life activities. Defendant's App. at 68-69. Bushman's response to Electrolux's motion for summary judgment did not identify any portion of the record which would contradict his discovery responses. Thus, the court concludes that Bushman has failed to generate a genuine issue of material fact regarding whether his diabetes has impaired a major life activity. Therefore, the court concludes that Electrolux is entitled to summary judgment on the ground that Bushman was not substantially limited in any major life activities.

2. Bushman's perceived disability claim

Plaintiff Bushman also alleges a claim of perceived disability discrimination under 42 U.S.C. § 12102(2)(C). The Supreme Court has interpreted this section of the ADA as follows:

> There are two apparent ways in which individuals may fall within this statutory definition: (1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities. In both cases, it is necessary that a covered entity entertain misperceptions about the individual--it must believe either that one has a substantially limiting impairment that one does not have or that one has a substantially limiting impairment when, in fact, the impairment is not so limiting.

Sutton v. United Air Lines, 527 U.S. 471, 489 (1999).

For the reasons outlined above, the court concludes that Electrolux has met its burden as the moving party under Rule 56(c) "of informing the district court of the basis for [its] motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel*, 953 F.2d at 395 (citing *Celotex*, 477 U.S. at 323); *see also Rose-Maston*, 133 F.3d at 1107; *Reed v. Woodruff County, Ark.*, 7 F.3d 808, 810 (8th Cir. 1993). The court further concludes that Bushman has failed to generate a genuine issue of material fact

regarding whether his diabetes was perceived as impairing a major life activity. Therefore, the court concludes that Electrolux is entitled to summary judgment on Bushman's perceived disability discrimination claims. The court turns next to Bushman's age discrimination claims.

D. Bushman's Age Discrimination Claims

At the time of oral argument, plaintiff Bushman orally withdrew his claims for age discrimination in violation of the ADEA and his pendant state law claim for violation of the ICRA. Therefore, the court grants Electrolux's Motion For Summary Judgment on these claims.

III. CONCLUSION

Initially, because the court concludes that Bushman has failed to generate a genuine issue of material fact as to whether he suffers from a qualifying disability within the meaning of the ADA and the ICRA, the court grants Electrolux's Motion For Summary Judgment on Bushman's claim that he was discriminated against because of an actual disability. In addition, the court grants Electrolux's Motion for Summary Judgment as to Bushman's perceived disability discrimination claim. Finally, because plaintiff Bushman orally withdrew his claims for age discrimination in violation of the ADEA and his pendant state law claim for violation of the ICRA, the court grants Electrolux's Motion For Summary Judgment on these claims.

IT IS SO ORDERED.

DATED this 24th day of March, 2003.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA